



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 08 नवम्बर, 2023 / 17 कार्तिक, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 3rd July, 2023

No. : Shram (A) 3-2/2023 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is

165—राजपत्र / 2023—08—11—2023

(9059)

pleased to order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh i.e. "e-Gazette" :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 13/2023	Sh. Amit Kumar Rai	M/s Evets Packaging (P) Ltd.	01.04.2023
2.	Ref. 23/2023	Smt. Bindu Devi	M/s Home Appliance Co.	01.04.2023
3.	App. 102/2019	Ms. Bimla	The XEN, HPPWD, Jubbal	27.04.2023
4.	App. 05/2019	Sh. Devi Dass	The XEN, HPPWD, Dhambi & Ors.	27.04.2023
5.	App. 115/2017	Sh. Gian Chand	The XEN, HPPWD, Winter Field & Ors.	27.04.2023
6.	App. 49/2019	Sh. Mohan Dass	The XEN, HPPWD, Winter Field & Ors.	27.04.2023
7.	Ref. 49/2022	Sh. Sunil Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
8.	Ref. 50/2022	Sh. Pankaj Thakur	M/s Johnson & Johnson Ltd.	27.04.2023
9.	Ref. 51/2022	Sh. Vijay Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
10.	Ref. 52/2022	Sh. Piyush Attri	M/s Johnson & Johnson Ltd.	27.04.2023
11.	Ref. 53/2022	Sh. Hari Krishan	M/s Johnson & Johnson Ltd.	27.04.2023
12.	Ref. 54/2022	Sh. Nardesh Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
13.	Ref. 55/2022	Sh. Vikram Jeet	M/s Johnson & Johnson Ltd.	27.04.2023
14.	Ref. 56/2022	Sh. Naresh Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
15.	Ref. 57/2022	Sh. Ravinder Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
16.	Ref. 58/2022	Sh. Devinder Singh	M/s Johnson & Johnson Ltd.	27.04.2023
17.	Ref. 59/2022	Sh. Chander Pal	M/s Johnson & Johnson Ltd.	27.04.2023
18.	Ref. 60/2022	Sh. Avnesh Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
19.	Ref. 61/2022	Sh. Mukesh Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
20.	Ref. 62/2022	Sh. Amit Langeh	M/s Johnson & Johnson Ltd.	27.04.2023
21.	Ref. 63/2022	Smt. Shashi Bala	M/s Johnson & Johnson Ltd.	27.04.2023
22.	Ref. 64/2022	Smt. Vimla Devi	M/s Johnson & Johnson Ltd.	27.04.2023
23.	Ref. 65/2022	Sh. Rishi Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
24.	Ref. 66/2022	Sh. Mohammad Firoz Khan	M/s Johnson & Johnson Ltd.	27.04.2023
25.	Ref. 67/2022	Sh. Sandeep Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
26.	Ref. 68/2022	Sh. Sunil Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
27.	Ref. 70/2022	Sh. Amardeep	M/s Johnson & Johnson Ltd.	27.04.2023
28.	Ref. 71/2022	Sh. Rumel Singh	M/s Johnson & Johnson Ltd.	27.04.2023
29.	Ref. 72/2022	Smt. Rupo Devi	M/s Johnson & Johnson Ltd.	27.04.2023
30.	Ref. 73/2022	Smt. Sonu Devi	M/s Johnson & Johnson Ltd.	27.04.2023
31.	Ref. 74/2022	Sh. Mukesh Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
32.	Ref. 75/2022	Sh. Virender Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
33.	Ref. 76/2022	Sh. Amit Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
34.	Ref. 77/2022	Smt. Rukmani Thakur	M/s Johnson & Johnson Ltd.	27.04.2023
35.	Ref. 78/2022	Sh. Aslam Ali	M/s Johnson & Johnson Ltd.	27.04.2023
36.	Ref. 79/2022	Smt. Sheetal Kumari	M/s Johnson & Johnson Ltd.	27.04.2023
37.	Ref. 80/2022	Smt. Reena Devi	M/s Johnson & Johnson Ltd.	27.04.2023
38.	Ref. 81/2022	Smt. Urmila Devi	M/s Johnson & Johnson Ltd.	27.04.2023
39.	Ref. 82/2022	Smt. Kanta Thakur	M/s Johnson & Johnson Ltd.	27.04.2023

40.	Ref. 83/2022	Sh. Satish Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
41.	Ref. 84/2022	Sh. Mangal Singh	M/s Johnson & Johnson Ltd.	27.04.2023
42.	Ref. 85/2022	Sh. Neelam Kumar	M/s Johnson & Johnson Ltd.	27.04.2023
43.	Ref. 86/2022	Sh. Sunil Dutt	M/s Johnson & Johnson Ltd.	27.04.2023
44.	Ref. 87/2022	Sh. Parkash Chand	M/s Johnson & Johnson Ltd.	27.04.2023
45.	Ref. 88/2022	Sh. Puran Singh	M/s Johnson & Johnson Ltd.	27.04.2023

By order,
AKSHAY SOOD,
Secretary (Lab. & Emp.).

**BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H. P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 13 of 2023

Instituted on : 04.01.2023

Decided on : 01.0.2023

Amit Kumar Rai s/o Shri Ram Chander Rai, r/o Village Kala Toka, P.O. Ujay, Tehsil Kuesh, Sathan, District Dharbhanga, Bihar . .Petitioner.

VERSUS

The Occupier/Factory Manager, M/s Evets Packaging Pvt. Ltd., Khasra No. 175, Village KotlaBuranwala Road, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : None

For Respondent : Shri Rajat Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification, dated 20.10.2022, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:—

“Whether termination of the services of Sh. Amit Kumar Rai s/o Shri Ram Chander Rai, r/o Village Kala Toka, P.O. Ujay, Tehsil Kuesh Sathan, District Dharbhanga, Bihar by the Occupier/Factory Manager, M/s Evets Packaging Pvt. Ltd., Khasra No. 175, Village Kotla Buranwala Road, Tehsil Baddi, District Solan, H.P. *w.e.f.* 14.07.2021 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement of the services, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Rajat Sharma, Advocate has appeared on behalf of the respondent company.

3. To the fore Ms. Samarjeet Kaur, HR Head of the respondent company has stated at bar that the matter has been full and finally resolved between the parties and the respondent company had paid an amount of ₹29000/- towards full and final settlement amount to the petitioner through cheque. She has also deposed that the petitioner has tendered his resignation, which was duly accepted by the management of respondent. She has placed on record authority letter (PA), copy of Aadhar Card (PB), copy of resignation tendered by the petitioner (PC), full and final receipt (PD) and copy of cheque (PE) on record. To this effect her statement recorded separately and placed on record.

4. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised as a result of which the respondent company has paid a sum of ₹ 29000/- (**Rs. Twenty Nine Thousand through cheque No. 000815 dated 20.02.2023**) as full and final settlement amount. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference No. 13 of 2023, stood amicably settled between the parties.

5. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 29000/- (Rs. Twenty Nine Thousand through cheque No. 000815 dated 20.02.2023).** Therefore, nothing survive in the present reference petition. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. authority letter (PA), copy of Aadhar Card (PB), copy of resignation tendered by the petitioner (PC), full and final receipt (PD) and copy of cheque (PE), which shall form the integral part and parcel of this award.

6. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.04.2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE Sh. RAJESH TOMAR, PRESIDING JUDGE, H. P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 23 of 2023
Instituted on : 05.01.2023
Decided on : 01.04.2023

Bindu Devi w/o Shri Lachi Ram, r/o Village Madhawal, Pritam Colony, Room No. 342,
P.O. Nanakpur, Tehsil Kalka, District Haryana. *..Petitioner.*

VERSUS

The Managing Director, M/s Home Appliance Company Village Buranwala, Tehsil Nalagarh, District Solan, H.P. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : None.

For Respondent : Shri Kamal Singh, AR

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification, dated 18.11.2022, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:—

“Whether termination of the services of Smt. Bindu Devi w/o Shri Lachi Ram, r/o Village Madhawal, Pritam Colony, Room No. 342, P.O. Nanakpur, Tehsil Kalka, District Haryana by the Managing Director, M/s Home Appliance Company, Village Buranwala, Tehsil Nalagarh, District Solan, H.P. w.e.f. 09.09.2021 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement of the services, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman, is entitled to from the above management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Kamal Singh, AR has appeared on behalf of the respondent company.

3. To the fore Shri Kamal Singh, AR of the respondent company has stated at bar that the matter has been full and finally resolved between the parties and the respondent company had paid an amount of ₹ 86,500/- towards full and final settlement amount to the petitioner through RTGS in her bank account. He has placed on record authority letter (PA), settlement under section 18(1) of the Industrial Disputes Act, 1947 (PB), calculation sheet of full & final settlement (PC), application (PD), resignation (PE), copy of Aadhar Card (PF) and (PG) and no dues certificate (PH), on record. To this effect his statement recorded separately and placed on record.

4. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised as a result of which the respondent company has paid a sum of **₹ 86,500/- (Eighty Six Thousand Five Hundred) towards full and final settlement amount to the petitioner through RTGS.** Therefore, the industrial dispute raised from the side of the petitioner arising out of reference No. 23 of 2023, stood amicably settled between the parties.

5. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 86,500/- (Eighty Six Thousand Five Hundred) towards full and final settlement amount to the petitioner through RTGS.** Therefore, nothing survive in the present reference petition. The reference is answered

accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e* authority letter (PA), settlement under section 18(1) of the Industrial Disputes Act, 1947 (PB), calculation sheet of full & final settlement (PC), application (PD), resignation (PE), copy of Aadhar Card (PF) and (PG) and no dues certificate (PH), which shall form the integral part and parcel of this award.

6. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.04.2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE Sh. RAJESH TOMAR, PRESIDING JUDGE, H. P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 102 of 2019
Instituted on : 13.09.2019
Decided on : 27.04.20

Bimla w/o Shri Kaman Singh, r/o Village Chamain, P.O. Kalbog, Tehsil Kotkhai, District Shimla, H.P. . *Petitioner.*

VERSUS

The Executive Engineer, HPPWD, Division Jubbal, District Shimla, H.P. . *Respondent.*

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Shri Ravinder Jaswal, Advocate
For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an application instituted on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) seeking reinstatement into service along-with all consequential benefits and seniority in the department.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that she was appointed as daily waged beldar with the respondent department at Sub-Division Kalbog, Tehsil Kotkhai, District Shimla H.P. in the month of April 1988 and the petitioner had worked as per the desire and satisfaction of her seniors and superiors but on 07.02.1998 while on duty at Guma-Bhagi Road, the petitioner along-with other labourers met with an accident due to failing of heavy boulders from the hill side and in the said accident few labourers lost their lives and four including the petitioner sustained serious injuries and it take

much time to get recovered from the injuries sustained in the said accident. The petitioner remained hospitalized for about 10 days and was discharged with 7% disability. The petitioner had also preferred claim under workmen's compensation Act, which was allowed in her favour. The petitioner, after recovery from the injuries again resumed her duties in the month of August 1999 but since she had not recovered fully from the injuries she went under medical treatment since December 1999 till April 2002. The petitioner again in the month of May 2002 resumed her duties with the department and continued till August 2004 but due to physical disability and nature of job, the petitioner went under mental depression and was confined to bed. The petitioner was being given local/prevaling treatment at home and now with the grace of God, the petitioner has recovered from her depression. The petitioner because of her illness could not join her duties from the month of September 2004 till date and thus remained absent from her duty. The petitioner wants to join her duties with the same seniority, hence, she made detailed representation to the respondent department on 19.08.2017 but of no avail.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under: —

“It is therefore most respectfully prayed that the claim petition of the petitioner may kindly be allowed and the employer/respondent department may kindly be directed to re-engage the petitioner from October 2004 with all consequential benefits along-with interest @ 18% per annum till the realization of the same and seniority.

Any other relief which this Hon'ble Court may feel fit and proper be also awarded in favour of petitioner/workman in the larger interest of justice and equality.”

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* raising preliminary objections that the petition is barred by the period of limitation, estoppel and maintainability.

5. On merits, it is submitted that the petitioner left the department *w.e.f.* 2004 without any reason. The petitioner was initially engaged on daily wages basis on 4/98 and while on working the petitioner had got injured due to falling of boulders from hill side of road and the case of the petitioner was moved to the Commissioner under the Workmen's Compensation Act and the amount of compensation along-with all statutory benefits were granted to the petitioner. The petitioner had again joined her duties and worked for some time with the department but she again left the duties without any cogent reason and now after a gap of atleast 16 years, the petitioner has filed this petition to get undue benefits. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 06.01.2022, as under:—

1. Whether the termination of the petitioner from services *w.e.f.* September 2004 without complying the provisions of the Industrial Disputes Act is illegal and unjustified? ..*OPP.*
2. If issue no.1 is proved in negative, than what service benefits the petitioner is entitled to? ..*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

4. Whether the petitioner is estopped by her acts, deeds, conduct and acquiescence as alleged? ..OPR.

5. Whether the petitioner is barred by the period of limitation as filed after delay of 16 years as alleged? ..OPR

Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1 : Becomes redundant

Issue No. 2 : Not entitled to any relief

Issue No. 3 : Yes

Issue No. 4 : No

Issue No.5 : Decided accordingly

Relief : Application dismissed as per operative part of award/order.

REASONS FOR FINDINGS

ISSUES No.1, 2, 3 & 5

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she reiterated almost all the averments as made in the claim petition. She also tendered into evidence representation (PW-1/B, letter dated 22.06.2017 (PW-1/C), OPD Slip (PW-1/D), copy of Order (PW-1/E), OPD Slip Mark PX-1, Medical Certificate OPD Slip Mark PX-2 and Mark PX-3, OPD Slip OPD Slip Mark PX-4, Medical Certificate OPD Slip Mark PX-5, Discharge slip OPD Slip Mark PX-6, letter OPD Slip Mark PX-7, Disability Certificate OPD Slip Mark PX-8, representation dated 18.12.2014 OPD Slip Mark PX-9 and OPD Slip OPD Slip Mark PX-10.

13. In cross-examination, on behalf of respondent, she deposed that she filed the claim petition before this Court after a gap of 15-16 years. She admitted that she was duly paid the compensation in the case of accident. She further admitted that the medical treatment was provided to her by the department. She denied that she did not report for duty since 2004. She further denied that she had abandoned the job herself out of her own sweet will.

14. In order to rebut, the respondent has examined Shri Rattan Chand Kondal, Executive Engineer, HPPWD as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence seniority list (RW-1/B), mandays chart (RW-1/C) and receipt Mark PX-1.

15. In cross-examination, on behalf of petitioner he admitted that the accident took place in the year 1998 at Kalbog, Gumma-Baghi Road at Chamain. He admitted that the petitioner had suffered serious injury in the said accident and was hospitalized. He admitted that the compensation was assessed without associating the petitioner. He further admitted that the petitioner had resumed her duties and working till August 2004. He denied that no liabilities on medical were borne by the department. He admitted that no notice was issued to the petitioner to join/resume her duties. He denied that the petitioner was not allowed to join her duty.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Ravinder Jaswal, Learned Counsel for the petitioner has contended with all vehemence that the petitioner met with an accident during duty hours and due to serious injuries sustained to her, she could not resume her duties. He further contended that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to "retrenchment". It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages.

18. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner herself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 15-16 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petitioner by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:—

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the**

Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

21. Verily, it is pertinent to point out here that the provisions of sub Section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. sub-section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- section(1). A bare reading of above provision would indicate that a dispute covered under sub-section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. sub-section (3) of Section 2-A would operate independently. The right available to the workman under section 2-A is not withstanding anything contained in Section 10 of the ID Act.

22. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate

Government under section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2-A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1). Time limit for making an application to the Labour Court stipulated in sub-section (3) of Section 2-A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2-A. In any event right conferred under section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

23. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court in the case of **Naziruddin Vs Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:—

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

24. Thus, in the background of the dicta of the Apex Court in **Naziruddin's** case referred to *supra*, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnatka has observed in **Writ Petition No.27510/2015 case titled as M/s ITC Infotech India Ltd., Vs Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

25. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that she had worked with the respondent on daily wage basis *w.e.f.* April 1998 till August 2004. It is also an admitted fact that the present industrial dispute has been raised by him after more than 15-16 years. Furthermore, the present application has been instituted by the

petitioner before this Tribunal directly by preferring the claim petition in the Court, however, she kept on slumbering or slept over the matter for such a pretty long period of time. No efforts were made by her to raise the demand notice before the Appropriate Government or Labour Officer. She had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby sub-section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by sub section (3) of Section 2-A of the Act.

26. For the foregoing reasons and having regard to the law laid down (*supra*) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 15-16 years from the date of her termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, All these issues are answered against the petitioner and in favour of respondent.

ISSUE No.4

27. In support of this issue no specific evidence has been led by the respondent which could go to show that the petitioner is estopped by her acts, deeds, conduct and acquiescence. Hence, in the absence of any evidence, this issue is decided against the respondent and in favour of the petitioner.

RELIEF

28. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by her. The parties to the lis are left behind to bear their own costs respectively.**

29. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 27th day of April, 2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 05 of 2019
Instituted on : 10.01.2019

Decided on : 27.04.2023

Devi Dass s/o Shri Uttam Ram r/o Village Sanena, P.O. Thaila, Tehsil Sunni, District Shimla, H.P. . *Petitioner.*

Versus

1. The Executive Engineer, HPPWD, Division Dhami, District Shimla, H.P.
2. The Assistant Engineer, HPPWD Sub-Division, Dhami, District Shimla, H.P.
3. The Assistant Engineer, HPPWD Jalog, District Shimla, H.P. . *Respondent.*

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Shri Rajkumar, Advocate

For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an application instituted on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) seeking reinstatement into service along-with all consequential benefits and seniority in the department.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was appointed as daily waged beldar with the respondents department *w.e.f.* April 1997 and worked as such till 1998 and thereafter his services were terminated orally by the respondents without any reason and that too without serving any prior notice upon the petitioner as required under the law. The petitioner had worked at various places but his services were terminated without serving any prior notice and paying retrenchment compensation as required under section 25-F of the Act. The respondents department had engaged many fresh persons after the illegal termination of the petitioner and even retained many juniors namely S/Shri Ram Parkash, Joginder, Shob Ram etc., which is against the mandatory provisions of sections 25-G and 25-H of the Act. It is pleaded that the petitioner had completed 240 days in twelve calendar months but despite his oral requests, he was not re-engaged by the respondents department. Since, the conciliation proceedings were failed due to unreasoned attitude of the respondents but the Labour Commissioner had not taken any decision in the matter, hence, the present application has been directly filed by the petitioner.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:—

“It is therefore most respectfully prayed that the directions may kindly be issued to the respondents to re-instate the petition in service along-with all consequential benefits/relief of back-wages, seniority, continuity and regularization of services besides the cost of the petition”.

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* raising preliminary objections that the petition not maintainable, the same is barred by the period of limitation, petition is hit by the principles of Res-judicata and abandonment.

5. On merits, it is submitted that the petitioner was engaged as daily wager beldar during the month of April 1997 under Dhalli Sub-Division and he had worked till 1998. The services of the petitioner were never terminated by the respondent rather he himself had abandoned his job, hence, there arose no question to serve any notice under section 25-F of the Act. It is submitted that the petitioner had not completed 240 working days in a calendar year. It is further submitted that the department had engaged the workers on availability of vacant posts at that time and also appointed the workers on compassionate grounds. The petitioner had never approached the department either orally or in writing for his re-engagement. The present reference petition has been filed by the petitioner after a lapse of 14 years and as such the same deserves to be dismissed. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 01.10.2019, as under:—

1. Whether the termination of the petitioner in the year 1998 is violative of the provisions of section 25F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so to what relief the petitioner is entitled to? . . . *OPP*.
2. Whether the claim petition is hit by the vice of delay and laches as the claim having been raised after a gap of 14 years, as alleged? If so, its effects thereto? . . . *OPR*.
3. Whether the claim petition is hit by the principles of res-judicate as the matter has already been decided by the Hon'ble Administrative Tribunal vide CWP (T) No. 1799 of 2015 and the order issue thereupon by the Engineer-in-Chief, HPPWD on 13.09.2016, as alleged? If so its effect thereto? . . . *OPR*.
4. Whether the claim petition is not maintainable as alleged? If so, its effect thereto? . . . *OPR*.

Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:—

Issue No.1	:	No, Not entitled to any relief
Issue No.2	:	Yes
Issue No.3	:	Decided accordingly
Issue No.4	:	Yes
Relief	:	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS.*ISSUES No. 1, 2 and 4*

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

13. In cross-examination, on behalf of respondent, he denied that he had left the job at his own. He further denied that he had not intimated the department. He admitted that he had not approached any authority for a period of 14 years for his reinstatement.

14. Shri Prakash Chand Kamal, has stepped into the witness box as (PW-2) to depose that around 1997-1998, he had seen the petitioner working on the Nauti Khud-Gumma Road, with HPPWD.

15. In cross-examination he denied that he had not seen the petitioner working daily on the road. He further denied that since he knows the petitioner from his childhood, hence, he is deposing falsely in his favour.

16. Shri Sobh Ram has also appeared into the witness box as (PW-3) to depose that he was working as a mate and the petitioner used to work with him in the same section. He further deposed that the petitioner used to work regularly with the department.

17. In cross-examination he expressed his ignorance that the petitioner had not completed 240 days in the both years *i.e* 1997-1998. He further denied that the petitioner had only completed 270 days in 1997 and 68 days in 1998.

18. In order to rebut, the respondent has examined Shri Ayush Khadaik, Junior Engineer, HPPWD Sub-Division Mashobra as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence Mandays chart (RW-1/B), orders (RW-1/C) and (RW-1/D).

19. In cross-examination, on behalf of petitioner he denied that the petitioner had completed 240 working days in each calendar year. He denied that the petitioner was illegally terminated from service and no provision of labour law has been followed. He admitted that junior persons to the petitioner have been retained in the services. Volunteered that they were retained on compassionate ground. He admitted that Ram Prakash, Joginder and Sobha Ram are working with the respondent.

20. This is the entire oral as well as documentary evidence adduced from the side of the parties.

21. Shri Raj Kumar, Learned Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without issuing any show-cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to “retrenchment“. He further contended that junior persons of the petitioner are still working with the department. It is therefore prayed that the petitioner is entitled to be

reinstated in service along-with all consequential service benefits including back-wages.

22. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 14 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

23. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

24. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petitioner by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under: —

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) **Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) **Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) **The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”**

25. Verily, it is pertinent to point out here that the provisions of sub-section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial

dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. sub-section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub-section(1). A bare reading of above provision would indicate that a dispute covered under sub-section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. sub-section (3) of Section 2-A would operate independently. The right available to the workman under Section 2-A is not withstanding anything contained in Section 10 of the ID Act.

26. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2-A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1). Time limit for making an application to the Labour Court stipulated in sub-section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

27. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court in the case of Naziruddin Vs Sitaram Agarwal reported in AIR 2003 SCW 908, has held as under:—

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

28. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in Writ Petition No.27510/2015 case titled as M/s ITC Infotech India Ltd., Vs Mr. Venkataramana Uppada that the Labour Court cannot entertain a claim petition filed under Section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

29. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis in the years 1997-1998. It is also an admitted fact that the present industrial dispute has been raised by him after more than 14 years. Furthermore, the present application has been instituted by the petitioner before this Tribunal directly by preferring the claim petition in the Court, however, she kept on slumbering or slept over the matter for such a pretty long period of time. No efforts were made by him to raise the demand notice before the Appropriate Government or Labour Officer. He had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby sub-section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by sub-section (3) of Section 2-A of the Act.

30. For the foregoing reasons and having regard to the law laid down (*supra*) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 14 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, all these issues are answered against the petitioner and in favour of respondents.

ISSUE No. 3

31. In order to prove this issue, the respondent department had placed on record the copy of.

RELIEF

32. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is**

hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by him. The parties to the lis are left behind to bear their own costs respectively.

33. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 115 of 2017

Instituted on : 28.08.2017

Decided on : 27.04.2023

Gian Chand s/o Shri Narayan Dass, r/o Village Hajal, P.O. Gumma, Tehsil Sunni, District Shimla, H.P. . *Petitioner.*

VERSUS

1. The Executive Engineer, HPPWD, Division No.1, Winter Field Shimla, District Shimla, H.P.

2. The Assistant Engineer, HPPWD Division No.1, Winter Field Shimla, District Shimla, H.P.

3. The Assistant Engineer, HPPWD Division No.1, Winter Field Shimla, District Shimla, H.P.

. *Respondent.*

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an application instituted on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) seeking reinstatement into service along-with all consequential benefits and seniority in the department.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was appointed as daily waged beldar with the respondents

department *w.e.f.* April 1997 and worked as such till 1998 and thereafter his services were terminated orally by the respondents without any reason and that too without serving any prior notice upon the petitioner as required under the law. The petitioner had worked at various places but his services were terminated without serving any prior notice and paying retrenchment compensation as required under section 25-F of the Act. The respondents department had engaged many fresh persons after the illegal termination of the petitioner and even retained many juniors namely S/Shri Ram Parkash, Joginder, Shob Ram etc., which is against the mandatory provisions of sections 25-G and 25-H of the Act. It is pleaded that the petitioner had completed 240 days in twelve calendar months but despite his oral requests, he was not re-engaged by the respondents department. Since, the conciliation proceedings were failed due to unreasoned attitude of the respondents but the Labour Commissioner had not taken any decision in the matter, hence, the present application has been directly filed by the petitioner.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:—

“It is therefore most respectfully prayed that the directions may kindly be issued to the respondents to re-instate the petition in service along-with all consequential benefits/relief of back-wages, seniority, continuity and regularization of services besides the cost of the petition”.

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections that the petition not maintainable, the same is barred by the period of limitation, petition is hit by the principles of Res-judicata and abandonment.

5. On merits, it is submitted that the petitioner was engaged as daily wager beldar during the month of April 1997 under Dhalli Sub-Division and he had worked till 1998. The services of the petitioner were never terminated by the respondent rather he himself had abandoned his job, hence, there arose no question to serve any notice under section 25-F of the Act. It is submitted that the petitioner had not completed 240 working days in a calendar year. It is further submitted that the department had engaged the workers on availability of vacant posts at that time and also appointed the workers on compassionate grounds. The petitioner had never approached the department either orally or in writing for his reengagement. The present reference petition has been filed by the petitioner after a lapse of 14 years and as such the same deserves to be dismissed. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 01.10.2019, as under:—

1. Whether the termination of the petitioner in the year 1998 is violative of the provisions of section 25F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the claim petition is hit by the vice of delay and laches as the claim having been raised after a gap of 14 years, as alleged? If so, its effects thereto? . . .*OPR.*
3. Whether the claim petition is hit by the principles of res-judicate as the matter has already been decided by the Hon'ble Administrative Tribunal *vide* CWP (T) No. 1799

of 2015 and the order issue thereupon by the Engineer-in-Chief, HPPWD on 13.09.2016, as alleged? If so its effect thereto? . . . OPR.

4. Whether the claim petition is not maintainable as alleged? If so, its effect thereto?

. . . OPR.

Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:—

Issue no.1 : No. Not entitled to any relief

Issue no.2 : Yes

Issue no.3 : No

Issue No.4 : Yes

Relief : Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES No.1, 2 and 4.

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

13. In cross-examination, on behalf of respondent, he denied that he had left the job at his own. He further denied that he had not intimated the department. He admitted that he had not approached any authority for a period of 14 years for his reinstatement.

14. Shri Prakash Chand Kamal, has stepped into the witness box as (PW-2) to depose that around 1997-1998, he had seen the petitioner working on the Nauti Khud-Gumma Road, with HPPWD.

15. In cross-examination he denied that he had not seen the petitioner working daily on the road. He further denied that since he knows the petitioner from his childhood, hence, he is deposing falsely in his favour.

16. Shri Sobh Ram has also appeared into the witness box as (PW-3) to depose that he was working as a mate and the petitioner used to work with him in the same section. He further deposed that the petitioner used to work regularly with the department.

17. In cross-examination he expressed his ignorance that the petitioner had not completed 240 days in the both years *i.e* 1997-1998. He further denied that the petitioner had only completed 270 days in 1997 and 68 days in 1998.

18. In order to rebut, the respondent has examined Shri Ayush Khadaik, Junior Engineer, HPPWD Sub-Division Mashobra as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence Mandays chart (RW-1/B), orders (RW-1/C) and (RW-1/D).

19. In cross-examination, on behalf of petitioner he denied that the petitioner had completed 240 working days in each calendar year. He denied that the petitioner was illegally terminated from service and no provision of labour law has been followed. He admitted that junior persons to the petitioner have been retained in the services. Volunteered that they were retained on compassionate ground. He admitted that Ram Prakash, Joginder and Sobha Ram are working with the respondent.

20. This is the entire oral as well as documentary evidence adduced from the side of the parties.

21. Shri Raj Kumar, Learned Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without issuing any show-cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to “retrenchment“. He further contended that junior persons of the petitioner are still working with the department. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages.

22. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 14 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

23. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

24. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petitioner by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under: —

“2A. Dismissal, etc., of an individual workman to be deemed to be an dispute.—

- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour**

Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

25. Verily, it is pertinent to point out here that the provisions of sub-section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. sub-section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub-section(1). A bare reading of above provision would indicate that a dispute covered under sub-section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. sub-section (3) of Section 2-A would operate independently. The right available to the workman under Section 2-A is not withstanding anything contained in Section 10 of the ID Act.

26. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of

Section 2-A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1). Time limit for making an application to the Labour Court stipulated in sub-section (3) of Section 2-A does not appear to have a bearing to the provisions of sub-section (2) of Section 2-A. In any event right conferred under section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

27. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court in the case of **Naziruddin Vs Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:—

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

28. Thus, in the background of the dicta of the Apex Court in **Naziruddin's** case referred to *supra*, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnatka has observed in **Writ Petition No.27510/2015 case titled as M/s ITC Infotech India Ltd., Vs Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

29. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis in the years 1997-1998. It is also an admitted fact that the present industrial dispute has been raised by him after more than 14 years. Furthermore, the present application has been instituted by the petitioner before this Tribunal directly by preferring the claim petition in the Court, however, she kept on slumbering or slept over

the matter for such a pretty long period of time. No efforts were made by him to raise the demand notice before the Appropriate Government or Labour Officer. He had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby sub-section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by Sub Section (3) of Section 2-A of the Act.

30. For the foregoing reasons and having regard to the law laid down (supra) vis-à-vis my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 14 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, all these issues are answered against the petitioner and in favour of respondents.

ISSUE NO. 3

31. In order to prove this issue, the respondent department had placed on record the copy of order of the Hon'ble High Court and also asserted that since the matter has already been decided by the Administrative Tribunal *vide* CWP (T) No. 1799 of 2015 and the orders/office orders issued thereafter by the Engineer-in-Chief HPPWD on 13.09.2016, 30.09.2016 and subsequently September 2017, would clear cut barred the claim petition, hit by the principle of Res-judicata. In my humble opinion, the principle of Res-judicata, as enshrined in section 11 of Code of Civil Procedure shall not be attracted, which is applicable in suit or issue, in which the matter is directly and substantially in issue between the same parties or between parties under whom they or any of them claim, under the same title, in a competent court to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court. The present one is an application under section 2-A of the Act and therefore cannot be deemed to be a civil suit, where the principle laid down in section 11 of CPC relating to Res-judicata shall apply. I do not find any substantial force in the plea or contention raised at the bar that the claim petition is hit by principle of Res-judicata. The plea is devoid of any substantial force and is hereby declined. The issue in question is answered in negative.

RELIEF

32. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by him. The parties to the lis are left behind to bear their own costs respectively.**

33. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Application Number : 49 of 2019

Instituted on : 13.05.2019

Decided on : 27.04.2023

Mohan Dass s/o Shri Man Dass, r/o Village Chebri, P.O. Khaira, Tehsil Sunni, District Shimla, H.P. . .*Petitioner.*

VERSUS

1. The Executive Engineer, HPPWD, Division Winterfield, Division No.1, Shimla, District Shimla, H.P.

2. The Assistant Engineer, HPPWD Sub-Division, Kasumpti, Shimla-9 . .*Respondents.*

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Shri Rajkumar, Advocate

For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an application instituted on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) seeking reinstatement into service along-with all consequential benefits and seniority in the department.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was appointed as daily waged beldar with the respondents department at Sub-Division Kasumpti *w.e.f.* 1994 and worked as such till 1995 and thereafter his services were terminated orally by the respondents without any reason and that too without serving any prior notice upon the petitioner as required under the law. The petitioner had worked at various places but his services were terminated without serving any prior notice and paying retrenchment compensation as required under section 25-F of the Act. The respondents department had engaged many fresh persons after the illegal termination of the petitioner and even retained many juniors namely S/Shri Dinesh Kumar, Balbir Singh, Pradeep, Gopal, Amar Singh, Mela Ram, Prem Chand, Inder Singh, Medh Ram etc., which is against the mandatory provisions of sections 25-G and 25-H of the Act. It is pleaded that the petitioner had completed 240 days in twelve calendar months but despite his oral requests, he was not re-engaged by the respondents department. Since, the conciliation proceedings were failed due to unreasoned attitude of the respondents but the Labour Commissioner had not taken any decision in the matter, hence, the present application has been directly filed by the petitioner.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:—

“It is therefore most respectfully prayed that the directions may kindly be issued to the respondents to re-instate the petition in service along-with all consequential

benefits/relief of back-wages, seniority, continuity and regularization of services besides the cost of the petition”.

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections that the petition not maintainable, the petitioner had not completed 240 working days, the claim is stale and estoppel.

5. On merits, it is submitted that the petitioner was engaged as daily wager beldar during the month of July 1992 and he worked only for three months and failed to complete 240 days service in a calendar year. The services of the petitioner were never terminated by the respondent rather he himself had abandoned his job, hence, there arose no question to serve any notice under section 25-F of the Act. The petitioner had never approached the department either orally or in writing for his reengagement. The present claim petition has been filed by the petitioner after a lapse of 28 years and as such the same deserves to be dismissed. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.08.2021, as under:—

1. Whether the termination of the petitioner is violative of the provisions of section 25F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative then what kind of relief the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable as alleged? If so, its effect thereto? . . .*OPR.*
4. Whether the petitioner is estopped from raising the dispute by his own act, deed, conduct and acquiescence? . . .*OPR.*
5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:—

Issue No.1	:	No
Issue No.2	:	Not entitled to any relief
Issue No.3	:	Yes
Issue No.4	:	No

Relief : Application dismissed as per operative part of award/order.

REASONS FOR FINDINGS

Issues No.1 To 3

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence copy of muster roll (PW-1/B), copy of judgments (PW-1/C) and (PW-1/D).

13. In cross-examination, on behalf of respondent, he denied that he had worked for three months in the year 1992. He further denied that he had not worked till the year 1995. He also denied that he had abandoned the job himself. He denied that he had not completed 240 working days in any calendar year. He denied that no juniors were retained by the respondent.

14. In order to rebut, the respondent has examined Shri Ramesh Kumar, Assistant Engineer, HPPWD Sub-Division Kasumpti as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence abstract of seniority register w.e.f. 1974 to 1995 (RW-1/B).

15. In cross-examination, on behalf of petitioner he denied that fresh hands were engaged after the termination of the petitioner. He admitted that the persons were engaged after 1995. He denied that the petitioner had completed 240 working days in a calendar year. He further denied that the services of the petitioner were terminated by the department. He also denied that the petitioner had worked continuously till 1995.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Raj Kumar, Learned Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to "retrenchment". He further contended that junior persons of the petitioner are still working with the department. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages.

18. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 28 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:—

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- section(1). A bare reading of above provision would indicate that a dispute covered under sub-section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of

discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. sub-section (3) of Section 2-A would operate independently. The right available to the workman under Section 2-A is not withstanding anything contained in Section 10 of the ID Act.

22. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2-A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)". Time limit for making an application to the Labour Court stipulated in sub-section (3) of Section 2-A does not appear to have a bearing to the provisions of sub-section (2) of Section 2-A. In any event right conferred under section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

23. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:—

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

24. Thus, in the background of the dicta of the Apex Court in **Naziruddin's** case referred to supra, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of

Karnatka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis from 1992 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 28 years. Furthermore, the present application has been instituted by the petitioner before this Tribunal directly by preferring the claim petition in the Court, however, she kept on slumbering or slept over the matter for such a pretty long period of time. No efforts were made by him to raise the demand notice before the Appropriate Government or Labour Officer. He had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby sub section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by sub-section (3) of Section 2-A of the Act.

25. For the foregoing reasons and having regard to the law laid down (*supra*) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 28 years from the date of his termination/abandonment, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, all these issues are answered against the petitioner and in favour of respondents.

ISSUE NO. 3

26. In order to prove this issue, no specific evidence has been led by the respondents, which could go to show that the petitioner was estopped from raising the dispute by his own act, deed, conduct and acquiescence. Hence, in the absence of any specific evidence on record, this issue is answered against the respondents.

RELIEF

27. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by him. The parties to the lis are left behind to bear their own costs respectively.**

28. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 49 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Sunil Kumar s/o late Shri Ghaseeta Ram, r/o Village Arla, Tehsil Palampur, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space, Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondent.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 26.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Sunil Kumar s/o late Shri Ghaseeta Ram r/o Village Arla, Tehsil Palampur, District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to Rs. 24,13,060/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not, its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi,

District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johson Pvt. Ltd., 501, Arena Space, Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 40 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2 (aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,37,942/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:—

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-in itio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of Rs. 50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day’s advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board.

Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to Rs. 24,13,060/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:—

Issue No.1 : No, Not entitled to any relief

Issue No. 2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award

REASONS FOR FINDINGS

ISSUE NO.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof *i.e.* appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter Mark PX-1.

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the

services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.**

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by

displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless

to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:—

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

(a) an undertaking in which--

- (i) less than fifty workmen are employed, or**
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section**
- (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of

section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was

carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**"Form 'W'
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103, dated the 21st day of October, 2020.

To

The Secretary Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd."

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after

rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V-has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of

statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced

by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment. Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines and Another, Civil Appeal Nos.

4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "***Matters incidental thereto***" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case ***The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342*** and ***Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432***, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon ***Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316*** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon ***Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431***, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case ***Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020*** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case ***K VenuGopal Rao versus The Union of India and Others OA No 020/326/2020 decided on 17 July 2020*** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that

the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. ₹ 24,13,060/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor

maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 50 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Pankaj Thakur s/o Shri Roop Singh Thakur, r/o Village Daroh, P.O. Chamari, Tehsil Bangana, District Una, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space, Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Pankaj Thakur s/o Shri Roop Singh Thakur, r/o Village Daroh, P.O. Chamari, Tehsil Bangana, District Una, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to `25,29,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not, its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space, Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was

conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,95,080/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:—

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innito.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice.

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are two unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by

referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,29,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:—

Issue No.1	: No, Not entitled to any relief
Issue No. 2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for

launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not

paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.**

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient

provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:—

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of

such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) **financial difficulties (including financial losses); or**
- (ii) **accumulation of undisposed of stocks; or**
- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrily (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously

argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd. Address Plot No. 52 8, EPIP Phase-1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To,

**The Secretary to the Government of Himachal Pradesh, Labour Department,
Shimla**

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot

No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours

faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the

condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Maharashtra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking

immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment:—

Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in

service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of

Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines and Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon

Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,29,202/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 51 of 2022
Instituted on : 15.02.2022
Decided on : 27.04.2023

Vijay Kumar s/o Shri Nanak Chand r/o VPO Rainsary, Tehsil & District Una, H.P.

...Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondent.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

A W A R D

The following reference petition has been, received from the Appropriate Government vide notification dated 26.10.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Vijay Kumar s/o Shri Nanak Chand, r/o VPO Rainsary, Tehsil & District Una, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹ 25,26,702/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory

liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,06,085/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the

respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:—

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and *void ab-innito*.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice.

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on

21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25,26,702/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No. 1	: No, Not entitled to any relief
Issue No. 2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B),

statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these

letters and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.**

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 days statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 days notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section
- (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become

effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the

considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

“ Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION
25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To,

**The Secretary to the Government of Himachal Pradesh, Labour Department,
Shimla.**

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits,

medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of

the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent No. 2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent No.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Maharashtra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away,

but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount

to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union versus Lufthansa German Airlines And Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the

Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,26,702/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he

had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 52 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2

Piyush Attri s/o Shri Narender Attri r/o Vilalge Lashan, P.O. Jabli, Tehsil Kasauli, District Solan, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Piyush Attri s/o Shri Narender Attri r/o Vilalge Lashan, P.O. Jabli, Tehsil Kasauli, District Solan, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹ 25,13,501/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid

₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,02,291/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innito.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to `25,13,501/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as here

- | | |
|-------------|---|
| Issue No.1 | : No, Not entitled to any relief |
| Issue No. 2 | : No |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award. |

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.**

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that

the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter-V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed For-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking

w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective,

a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation

Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd. Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103, dated the 21st day of October, 2020.

To,

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.” .

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at

Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to

section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ` 50 lacs (Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court *vis-a-vis* by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through

appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit *i.e* respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as

contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment

Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of India in Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award

for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the

demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ` 25,13,501/- or in alternative to enhance the compensation amount upto ` 50 lacs (Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 53 of 2022.

Instituted on : 15.02.2022.

Decided on : 2

Hari Krishan s/o Shri Ramesh Chand r/o V.P.O. Samela, Tehsil & District Kangra, H.P.

. .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.10.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Hari Krishan S/o Shri Ramesh Chand R/o VPO Samela, Tehsil & District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ` 25,21,370/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ` 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was

conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ` 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ` 1,21,154/- as gratuity amount for service upto 22.12.2020 and ` 17,99,401/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- Y. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.
- Z. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.]
- AA. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- BB. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of `50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

CC. That the record of the case may kindly also be summoned.

DD. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The

grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

34. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,21,370/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP.*

35. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*

36. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder

Issue no.1 : No. Not entitled to any relief

Issue No.2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. He volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for

retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be

allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ` 50 lacs (Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the

requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other

activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section
- (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was

no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.**

Name of employer Johnson & Johnson Pvt. Ltd., Address Plot No. 52 8, EPIP Phase-1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103, dated the 21st day of October, 2020.

**To,
The Secretary to the Government of Himachal Pradesh, Labour Department,
Shimla.**

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Maharashtra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer

proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment. Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation

amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court

clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), **decided on 23 April 2019** wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh**

versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January, 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by

paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,21,370/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief :

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 54 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Nardesh Kumar s/o Shri Julfi Ram r/o Village Turu, P.O. Kahandhat, Tehsil Baroh, District Kangra, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

A W A R D

The following reference petition has been, received from the Appropriate Government vide notification dated 26.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Nardesh Kumar s/o Shri Julfi Ram r/o Village Turu, P.O. Kahandhat, Tehsil Baroh, District Kangra, H.P. for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹24,10,647/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,200/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other

similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2 (aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,16,351/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the

termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of `50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or

elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,10,647/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	: No, Not entitled to any relief
Issue No. 2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B),

statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these

letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.**

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter-V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances**

as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase-1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To,

**The Secretary to the Government of Himachal Pradesh, Labour Department,
Shimla.**

Dear Sir/Madam.

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and

acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter-V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At

the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as **The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer,**

Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps

for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v.

Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their

discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,10,647/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief :

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he

had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 55 of 2022
Instituted on : 15.02.2022
Decided on : 27.04.2023
Vikram Jeet s/o Late Shri Raju Ram, r/o V.P.O. Masroor, Tehsil Dehra, District Kangra
H.P.
. .Petitioner.

Versus

M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai-400060, through its Authorized Signatory.

1. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P.
. .Respondents

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocat

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Vikram Jeet s/o Late Shri Raju Ram r/o V.P.O. Masroor, Tehsil Dehra, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹ 28,82,643/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,200/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2 (aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid

₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,53,462/- as gratuity amount for service upto 22.12.2020 and ₹ 20,12,032/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms

and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹28,82,643/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

- | | | |
|-------------|---|---|
| Issue No.1 | : | No, Not entitled to any relief |
| Issue No. 2 | : | No |
| Relief | : | Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award. |

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc.

were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.**

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter,

probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e.

Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a

proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that

there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd. Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh -174103, dated the 21st day of October, 2020.

To,

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”.

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **"lay off and retrenchment"**, **"special provisions relating to lay-off, retrenchment and closure in certain establishment"**, and **"unfair labour practices"**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the

respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally

proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as **The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations** held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment. Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos.

4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019
wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that

the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 28,82,643/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor

maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief :

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 56 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Naresh Kumar s/o Shri Lok Pal, r/o Village Arthi, P.O. Bari-Gunanu, Tehsil Sadar, District Mandi, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
 For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.11.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Naresh Kumar s/o Shri Lok Pal, r/o Village Arthi, P.O. Bari-Gunanu, Tehsil Sadar, District Mandi, H.P. for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹ 25,13,702/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the

petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2 (aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,79,413/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by

referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,13,702/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as

Issue No.1	: No, Not entitled to any relief
Issue No. 2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had

opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final

compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.**

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent

management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or

(ii) **accumulation of undisposed of stocks; or**

(iii) **the expiry of the period of the lease or licence granted to it; or**

(iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the

company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd. Address Plot No. 52 8, EPIP Phase-1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103, dated the 21st day of October, 2020.

To,

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's

explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if

the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment. Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation

amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-

Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving

in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in

alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,13,702/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief:

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H. P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 57 of 2022
Instituted on : 15.02.2022
Decided on : 27.04.2023

Ravinder Kumar s/o Shri Jagdish Chand, r/o Vilalge Ghatta, P.O. Dhamor, Tehsil & District Kangra, H.P. . . . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . . *Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Ravinder Kumar s/o Shri Jagdish Chand, r/o Vilalge Ghatta, P.O. Dhamor, Tehsil & District Kangra, H.P. for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹ 24,28,184/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,200/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other

similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,40,241/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the

termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner alongwith all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹ 50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or

elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,28,184/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder

Issue no.1	: No, Not entitled to any relief
Issue No.2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B),

statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transfer able job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these

letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances**

as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has

been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial

force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To,

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his

cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in

Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport

Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched" (Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment, is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the

employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount

to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the

Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner’s case.

52. Moreso, it would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,28,184/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he

had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 58 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Devinder Singh s/o late Shri Gian Chand, r/o Village Punani, P.O. Aloh, Tehsil Rakkar,
District Kangra, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondent.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Devinder Singh S/o late Shri Gian Chand r/o Village Punani, PO Aloh, Tehsil Rakkar, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to Rs. 24,20,832/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. (hereinafter to be referred as the respondent No.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid

₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,45,846/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of Rs. 50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to Rs. 24,20,832/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

- | | |
|-------------|--|
| Issue No. 1 | : No, Not entitled to any relief |
| Issue No. 2 | : No |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award |

REASONS FOR FINDINGS

Issue no.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules, 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond

the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the

respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”.

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal,

Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "lay off and retrenchment", "special provisions relating to lay off, retrenchment and closure in certain establishment", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of

layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ` 50 lacs (Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court *vis-à-vis* by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e

respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent No.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read

into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment, is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes –*stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in *ITLD Company versus ITLD workers*, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in *India Hume Pipe Company versus Their workman*, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in *Authorized Association of Upper India versus Labour Court and Others* 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in *District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007*, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings

recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned Counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner

relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages(19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,20,832/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is

not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 59 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Chander Pal s/o Shri Hari Ram r/o V.P.O. Passu, Tehsil Dharamshala, District Kangra, H.P.
. .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondent.

Reference Petition under section 10 of the Industrial Dispute Act, 1947.

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Chander Pal s/o Shri Hari Ram, r/o VPO Passu, Tehsil Dharamshala, District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to Rs. 25,15,358/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was

conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ` 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,94,482/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- C. That the respondents may kindly be directed to reinstate the petitioner alongwith all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of Rs. 50,00,000/- on the

analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

- E. That the record of the case may kindly also be summoned.
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct

events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to Rs. 25,15,358/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereu:

- | | |
|------------|---|
| Issue no.1 | : No, Not entitled to any relief |
| Issue No.2 | : No. |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award. |

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into

evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri

Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the

terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules, 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such

establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To,

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the

petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by

the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent No. 2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent No.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. **For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides.**

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close

down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF.

Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched”. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the

services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in *India Hume Pipe Company versus Their workman*, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist.

Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union versus Lufthansa German Airlines And Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned Counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court shall

confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman *Firstly*, he is the employee of the respondent, which he has miserably failed to do so. *Secondly*, there is severance and does not exist the Employer Employee relationship between the parties. *Thirdly*, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. *Fourthly*, the industrial establishment has been subjected to the closure by following the provision of section 25

FFA of the Act. *Fifthly*, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,15,358/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 60 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Avnesh Kumar s/o Shri Kishori Lal r/o Village Chhoti Haled, Tanda Road, P.O. and Tehsil Kangra, District Kangra, H.P. . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondent.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Avnesh Kumar s/o Shri Kishori Lal, r/o Village Chhoti Haled, Tanda Road PO and Tehsil Kangra, District Kangra, HP for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹24,23,415/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the

Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,37,770/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

OOO. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

PPP. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.

QQQ. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

RRR. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

SSS. That the record of the case may kindly also be summoned.

TTT. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day’s advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board.

Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 24,23,415/- is

proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1 : No. Not entitled to any relief

Issue No.2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof *i.e.* appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement

amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had

issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the

establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a

proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that

there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st, day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after

rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act *i.e.* section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "lay off and retrenchment", "special provisions relating to lay-off, retrenchment and closure in certain establishment", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts

that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced

by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched" (Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under

the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.¹⁰ In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union versus Lufthansa German Airlines And Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the

proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner’s case.

52. Moreso, it would be pertinent to mention that Learned Counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it’s adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July, 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned

down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,23,415/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he

had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 61 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Mukesh Kumar s/o Shri Sarwan Kumar, r/o V.P.O. Raisary, District Una, H.P. . . *Petitioner*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . *Respondent*.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Mukesh Kumar s/o Shri Sarwan Kumar r/o VPO Raisary, District Una, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,27,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/-

(including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,38,723/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

UUU. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

VVV. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.

WWW. That the respondents may kindly be directed to reinstate the petitioner alongwith all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

XXX. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

YYY. That the record of the case may kindly also be summoned.

ZZZ. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25,27,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

- | | |
|------------|--|
| Issue no.1 | : No. Not entitled to any relief |
| Issue No.2 | : No |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award |

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that

the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules, 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking

w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a**

notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section

25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was

carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,
For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after

rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "lay off and retrenchment", "special provisions relating to lay-off, retrenchment and closure in certain establishment", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts

that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced

by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-

4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned Counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper

and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrate that in order to sustain his case he has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist then there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensated by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ` 25,27,202/- or in alternative to enhance the compensation amount upto ` 50 lacs (Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been adduced by the respondent, which could legitimately go to show that as to how the present claim petition is neither competent nor

maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 62 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Amit Langeh s/o Shri Kuldeep Singh, r/o V.P.O. Tharu, Tehsil Shahpur, District Kangra,
H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondent.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents

: Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Amit Langeh s/o Shri Kuldeep Singh, r/o VPO Tharu, Tehsil Shahpur, District Kangra, HP for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,68,887/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual

increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,38,723/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- AAAA. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.
- BBBB. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- CCCC. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- DDDD. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- EEEE. That the record of the case may kindly also be summoned.

FFFF. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The

grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,27,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	: No. Not entitled to any relief
Issue No.2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award:

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof *i.e.* appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. He volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had

opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not

paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the peittioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor jusitified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under secton 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chaper V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same anology of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent

management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its bussiness/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules, 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of

such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—

- (i) less than fifty workmen are employed, or
(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) **financial difficulties (including financial losses); or**
- (ii) **accumulation of undisposed of stocks; or**
- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "Shall" thrice (3) in the provisions of section 25-FFA and the use of same expression "Shall" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty days' prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" found mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions use the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry is carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously

argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 40 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To,

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under Section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot

No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to layoff, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched" (Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in

continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my

humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation

as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that

when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no. 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section

25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,27,202/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 63 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Shashi Bala w/o Shri Rakesh Kumar, r/o Village & P.O. Chaplah, Tehsil Rakkar, District Kangra, H.P. . .*Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H. P. . .*Respondent.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Shashi Bala w/o Shri Rakesh Kumar, r/o Village & PO Chaplah, Tehsil Rakkar, District Kangra, HP for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving her full and final amounting to ₹25,34,719/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of

the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 34 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,18,722/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the

petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

GGGG. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

HHHH. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

IIII. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

JJJJ. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of `50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

KKKK. That the record of the case may kindly also be summoned.

LLLL. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25,34,719/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	: No. Not entitled to any relief
Issue No.2	: No.
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of her re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants *i.e.* Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules, 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties *i.e.* Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances**

as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty days prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 34 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS

before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (14) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to layoff, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent

management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent No.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport

Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or

taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount

to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union versus Lufthansa German Airlines And Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), *decided on 23 April 2019* wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the

Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,34,719/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 64 of 2022

Instituted on : 15.02.2022

Decided on : 27.04.2023

Vimla Devi w/o Shri Rajesh Kumar, r/o Village Khagal (Shivnagar), P.O. Khagal, Tehsil &
District Hamirpur. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office
Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized
Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1,
Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Vimla Devi w/o Shri Rajesh Kumar, r/o Village Khagal (Shivnagar), PO Khagal, Tehsil & District Hamirpur, HP for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving her full and final amounting to ₹25,23,801/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner

was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,08,500/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

MMMM. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

NNNN. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.

OOOO. That the respondents may kindly be directed to reinstate the petitioner alongwith all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

PPPP. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

QQQQ. That the record of the case may kindly also be summoned.

RRRR. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25, 23,801/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as h

Issue No.1 : No. Not entitled to any relief

Issue No. 2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).;

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was

over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and

tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 14 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be

allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its bussiness/establishment or unit or undertaking, as per the

requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules, 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an**

industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty days prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” found mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions use the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry is carried on. Section 2(cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its units and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 38 years of age and there are very blink chances of getting

them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

**Yours faithfully,
For Johnson & Johnson Pvt Ltd.”**

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of fourteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to fourteen years (14) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to layoff, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places *i.e.* Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc.* LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched" (Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where

any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on

subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning,

the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings.

It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil

Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking

by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,23,801/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 65 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Rishi Kumar s/o Shri Mast Ram, r/o Village Jalari, P.O. Janyankar, Tehsil and District Kangra, H.P.

. . . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . . *Respondent.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Rishi Kumar s/o Shri Mast Ram, r/o Village Jalari, P.O. Janyankar, Tehsil and District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹ 24,12,147/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East)-Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of

the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,29,608/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the

petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

SSSS. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

TTTT. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.

UUUU. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

VVVV. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

WWWW. That the record of the case may kindly also be summoned.

XXXX. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to `24,12,147/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as her under:

Issue no.1	: No. Not entitled to any relief
Issue No.2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the

vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the

Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the

Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He

again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully.

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits,

medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to layoff, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter

V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places *i.e.* Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit *i.e.* respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit *i.e.* respondent no.2. Admittedly, the petitioner was engaged by the respondent No.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched" (Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and

under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in *ITLD Company versus ITLD workers*, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in *India Hume Pipe Company versus Their workman*, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in *Authorized Association of Upper India versus Labour Court and Others* 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned Counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder

running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,12,147/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Reference Number : 66 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Mohd. Firoz Khan s/o Shri Zakir Hussain r/o Vilalge Khara, P.O. Jamniwala, Tehsil Paonta Sahib, District Sirmour, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Mohd. Firoz Khan s/o Shri Zakir Hussain, r/o Vilalge Khara, PO Jamniwala, Tehsil Paonta Sahib, District Sirmour, HP, for his reinstatement in service *w.e.f.* 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹ 25,25,702/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5 00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,05,474/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

YYYY. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

ZZZZ. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.

AAAAA. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

BBBBB. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

CCCCC. That the record of the case may kindly also be summoned.

DDDDD. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25,25,702/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as here under:

- | | |
|------------|---|
| Issue no.1 | : No. Not entitled to any relief |
| Issue No.2 | : No |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award. |

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent

management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its bussiness/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to

concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in**

such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was

no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION
25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla
Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent No.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched" (Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where

any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in *ITLD Company versus ITLD workers*, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be

closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, it would be pertinent to mention that Learned Counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies

within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.*

21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,25,702/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 67 of 2022
Instituted on : 18.02.2022
Decided on : 27.04.202

Sandeep Kumar s/o Shri Lekh Raj, r/o Village Chhatroli, P.O. Jassur, Tehsil Nurpur,
District Kangra, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Sandeep Kumar S/o Shri Lekh Raj, R/o Village Chhatroli, PO Jassur, Tehsil Nurpur, District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹24,28,184/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot, Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month+allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested

the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5.00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,04,161/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

EEEE. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

FFFF. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.

- GGGGG. That the respondents may kindly be directed to reinstate the petitioner alongwith all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- HHHHH. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- IIIII. That the record of the case may kindly also be summoned.
- JJJJJ. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage

even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 24,28,184/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1 : No. Not entitled to any relief

Issue No.2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and

salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to

adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules, 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its bussiness/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave Encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as *J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87*, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "**industrial establishment or undertaking**" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of

sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term

“industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION

25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred alongwith similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the

beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final alongwith all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to layoff, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons

for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched” (Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched”. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply

only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty One pages (31), followed by rejoinder running into Twenty Nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as Forty-Four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman *Firstly*, he is the employee of the respondent, which he has miserably failed to do so. *Secondly*, there is severance and does not exist the Employer Employee relationship between the parties. *Thirdly*, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. *Fourthly*, the

industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. *Fifthly*, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, as a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,28,184/- or in alternative to enhance the compensation amount upto ` 50 lacs (Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 68 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Sunil Kumar s/o Shri Uttam Chand, r/o V.P.O. Lag Manwin, Tehsil Bhoranj, District Hamirpur, H.P. .*Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. .*Respondent.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.11.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Sunil Kumar s/o Shri Uttam Chand, r/o V.P.O. Lag Manwin, Tehsil Bhoranj, District Hamirpur, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹24,12,714/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the

Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent No.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 40 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 alongwith its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,22,131/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

KKKKK. That the termination/retrenchment of the petitioner *vide* communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

LLLLL. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

MMMMM. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

NNNNN. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of `50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

OOOOO. That the record of the case may kindly also be summoned.

PPPPP. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”

7. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day’s advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board.

Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 24,12,714/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?
.. *OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1 : No, Not entitled to any relief

Issue No.2 : No

Relief Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof *i.e.* appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount alongwith termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the

services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A

and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan

Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—**

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination *void-ab-initio* or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to

the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that

the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 B, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after

rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of

statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent No. 2. Admittedly, the petitioner was engaged by the respondent No.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent No.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that *vide* appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced

by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent No.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc.* LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. **The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.**

78. **Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos.

4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), **decided on 23 April 2019** wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the

case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,12,714/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in

pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 70 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Amardeep s/o Shri Virender Kumar r/o V.P.O. Gondpur Banehra, Tehsil Ghanari, District Una, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Amardeep S/o Shri Virender Kumar R/o VPO Gondpur Banehra, Tehsil Ghanari, District Una, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹ 24,23,164/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the

petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.]

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,79,550/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

QQQQQ. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innitio.

RRRRR. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

SSSSS. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

TTTTT. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

UUUUU. That the record of the case may kindly also be summoned.

VVVVV. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The

grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 24,23,164/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

..OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1 : No. Not entitled to any relief.

Issue No.2 : No.

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. He volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had

opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termiantion letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respodnent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final

compensation. It, is therefore, prayed that the claim filed by the peittioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316), Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor jusitified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chaper V-A and not under Chapter V-B of the Act, therefore, the provisons of secton 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examiantion of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same anology of other regular employees, those who have been accomodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisoins of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisons of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its bussiness/establishment or unit or undertaking, as per the

requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the

other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--

- (i) less than fifty workmen are employed, or
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section
- (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be

deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places *i.e.* Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent No.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the

- section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,23,164/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 71 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Rumel Singh s/o Shri Pola Ram r/o V.P.O. Samela, Tehsil and District Kangra, H.P.

. .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* Notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Rumel Singh S/o Shri Pola Ram R/o VPO Samela Tehsil and District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹24,38,184/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,40,263/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

WWWWW. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

XXXXX. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

yyyyy. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

ZZZZZ. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

AAAAAA. That the record of the case may kindly also be summoned.

BBBBBB. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to `24,38,184/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relie

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereund

- | | |
|-------------|---|
| Issue No. 1 | : No. Not entitled to any relief |
| Issue No. 2 | : No. |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award. |

REASONS FOR FINDINGS.

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically

reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur

Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termiantion letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimiantion in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the

terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

(a) an undertaking in which—

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam.

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd."

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the

condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that

undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my

humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation

as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the

Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So,

the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,38,184/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 72 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Rupo Devi w/o Shri Baru Ram r/o Village Butiyana, P.O. Gawali, Tehsil Shillai, District Sirmour, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947.

For the Petitioner : Shri Rajiv Rai, Advocate.

For the Respondents : Shri Rajeev Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Rupo Devi W/o Shri Baru Ram R/o Village Butiyana, PO Gawali, Tehsil Shillai, District Sirmour, HP, for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving her full and final amounting to ₹25,26,633/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other

similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 42 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,98,649/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the

respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

CCCCCC. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

DDDDDD. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

EEEEEE. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

FFFFFF. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

GGGGGG. That the record of the case may kindly also be summoned.

HHHHHH. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or

elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,26,633/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder

Issue No.1	: No. Not entitled to any relief.
Issue No.2	: No.
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B),

statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these

letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman

under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 42 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)
FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION
25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such

notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount

of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the

subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention

of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in

this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner

would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so.

Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,26,633/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 73 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Sonu Devi w/o Shri Baljeet Singh r/o Village Kashmaila, P.O. Kashmaila, Tehsil Sarkaghat,
District Mandi, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office
Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized
Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1,
Jharmajri, Baddi, District Solan, H.P. . .Respondent

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide
notification dated 09.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter
referred to be as the Act), for its legal adjudication, which reads as under:

**“Whether The Demand Of Smt. Sonu Devi W/O Shri Baljeet Singh R/O Village
Kashmaila, Po Kashmaila, Tehsil Sarkaghat, District Mandi, Hp, For Her
Reinstatement In Service W.E.F. 21.12.2020 Before The Occupier/Factory Manager
M/S Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan,
Hp. After Receiving Her Full And Final Amounting To ₹25,19,633/- Is Proper And
Justified? If Yes, What Relief The Above Aggrieved Workman Is Entitled To From
The Above Management/Employer? And If Not Its Effect?”**

2. Material facts necessary for the disposal of present reference petition, as described in
the statement of claim, are thus that the petitioner was engaged as general workman trainee by the

Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,11,123/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- IIIII. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.
- JJJJJ. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.
- KKKKKK. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR
- LLLLLL. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.
- A. MMMMMM. That the record of the case may kindly also be summoned.
- NNNNNN. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day’s advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board.

Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,19,633/- is

proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as here

Issue No.1 : No. Not entitled to any relief.

Issue No.2 : No.

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she

utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termiantion letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimiantion in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respodnent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the peittioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & An.r decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor jusitified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the

company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and

also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper

form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 38 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that

there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after

rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "lay off and retrenchment", "special provisions relating to lay-off, retrenchment and closure in certain establishment", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts

that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places *i.e.* Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced

by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,19,633/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that she

had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 74 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Mukesh Kumar s/o Shri Ishwar Dass r/o Village & P.O. Hawan, Tehsil Ghumarwin, District
Bilaspur, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office
Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized
Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1,
Jharmajri, Baddi, District Solan, H.P. . .Responden

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 01.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Mukesh Kumar S/o Shri Ishwar Dass R/o Village & PO Hawan, Tehsil Ghumarwin, District Bilaspur, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹ 25,27,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid

₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,08,364/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

OOOOOO. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innito.

PPPPPP. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

QQQQQQ. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

RRRRRR. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

SSSSSS. That the record of the case may kindly also be summoned.

TTTTTT. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,27,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? *..OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? *.. OPR.*
3. Relie

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

- | | |
|------------|--|
| Issue No.1 | : No. Not entitled to any relief. |
| Issue No.2 | : No. |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award |

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316), Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in

nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ` 50 lacs (Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking

w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective,**

a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-

FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was

manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "lay off and retrenchment", "special provisions relating to lay-off, retrenchment and closure in certain establishment", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit

or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places *i.e* Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit *i.e* respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit *i.e* respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally

proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this

benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that

the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrate that in order to sustain his case he has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist then there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensated by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,27,202/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been adduced by the respondent, which could legitimately go to show that as to how the present claim petition is neither competent nor

maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 75 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Virender Kumar s/o Shri Lalit Kumar r/o Village hawani, P.O. Ropari, Tehsil Sarkaghat,
District Mandi, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondent.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 020.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Virender Kumar s/o Shri Lalit Kumar R/o Village hawani, PO Ropari, Tehsil Sarkaghat, District Mandi, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹28,83,054/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of **“Workman”** as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was

conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,53,462/- as gratuity amount for service upto 22.12.2020 and ₹ 20,20,490/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

UUUUUU. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

VVVVVV. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

WWWWW. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

XXXXXX. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of `50,00,000/- on the

analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

YYYYYY. That the record of the case may kindly also be summoned.

ZZZZZZ. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct

events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹28,83,054/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

..OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereun

Issue No.1 : No. Not entitled to any relief

Issue No.2 : No.

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C),

confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was

available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri

Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders

Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such

establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or

(ii) **accumulation of undisposed of stocks; or**

(iii) **the expiry of the period of the lease or licence granted to it; or**

(iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the

company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 B, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the

reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis

Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on

subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The

Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on

rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of

section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 28,83,054/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 76 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Amit Kumar s/o Shri Birbal Singh, r/o Village Delgi, PO Koti, Tehsil Baddi, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 02.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Amit Kumar s/o Shri Birbal Singh r/o Village Delgi, PO Koti, Tehsil Baddi, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹25,29,301/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested

the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,26,222/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

AAAAAAA. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

BBBBBBB. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

CCCCCCC. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

DDDDDDD. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

EEEEEEE. That the record of the case may kindly also be summoned.

FFFFFFF. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice.

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does

not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are two unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to `25,29,301/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

..OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder.

Issue No.1 : No. Not entitled to any relief

Issue No.2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS*Issue No.1*

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular

employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the

workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, Section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as

an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered

only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the **subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there

was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ` 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice

must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.¹⁰ In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the

workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA No 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section

25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,29,301/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 77 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Rukmani Thakur w/o Shri Amit Langeh, r/o Village Tharu, P.O. Tharu, Tehsil Shahpur,
District Kangra, H.P. . . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . *Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 02.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Rukmani Thakur w/o Shri Amit Langeh r/o Village Tharu, P.O. Tharu, Tehsil Shahpur, District Kangra, HP, for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving her full and final amounting to ₹ 25,61,801/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not, its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,27,547/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the

petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

GGGGGGG. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-initio.

HHHHHHH. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

IIIIII. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

JJJJJJ. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

KKKKKKK. That the record of the case may kindly also be summoned.

LLLLLLL. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,61,801/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

.. OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	: No, Not entitled to any relief
Issue No.2	: No
Relief	: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances**

as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 38 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS

before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the

factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable

to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman *Firstly*, he is the employee of the respondent, which he has miserably failed to do so. *Secondly*, there is severance and does not exist the Employer Employee relationship between the parties. *Thirdly*, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. *Fourthly*, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. *Fifthly*, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25, 61,801/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 78 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Aslam Ali s/o Shri Nazir Mohd., r/o Village Toka Nagla, P.O. Jamniwala, Tehsil Paonta Sahib, District Sirmaur, H.P. . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 02.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Aslam Ali s/o Shri Nazir Mohd., r/o Village Toka Nagla, PO Jamniwala, Tehsil Paonta Sahib, District Sirmaur, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B

EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,48,566/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid

₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,19,250/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

MMMMMM. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

NNNNNN. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

OOOOOO. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

PPPPPP. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

QQQQQQ. That the record of the case may kindly also be summoned.

PPPPPP. Any other or further order as this Hon’ble Court deems fit and proper may kindly also be passed in the interest of justice.

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms

and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are two unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,48,566/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1 : No, Not entitled to any relief

Issue No.2 : No

Relief. : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc.

were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the

company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and

also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section(2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-

initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position

on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after

rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of

statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh *vide* its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that *vide* appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced

by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc.* LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder

running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,48,566/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 79 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Sheetal Kumari w/o Shri Vinod Kumar, r/o Village Kharouth, P.O. Ballah, Tehsil Palampur,
District Kangra, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Sheetal Kumari w/o Shri Vinod Kumar, r/o Village Kharouth, P.O. Ballah, Tehsil Palampur, District Kangra, H.P., for her reinstatement in service *w.e.f.* 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving her full and final amounting to ₹25,11,486/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not, its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai -00060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 1,80,380/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

SSSSSSS. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innitio.

TTTTTTT. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

UUUUUUU. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

VVVVVVV. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

wwwwwww. That the record of the case may kindly also be summoned.

XXXXXXXX. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice.

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are two unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25, 11,486/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

- | | |
|------------|---|
| Issue No.1 | : No, Not entitled to any relief |
| Issue No.2 | : No |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award. |

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent

management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 14 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to

concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the**

other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 37 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was

no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to fourteen years (14) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings and would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P, amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an

undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25, 11,486/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 80 of 2022

Instituted on : 18.02.2022

Decided on : 27.04.2023

Reena Devi w/o Shri Ajay Kumar, r/o Village Ghar, P.O. Harsa, Tehsil Jawali District Kangra, H.P. . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947.

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.11.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Reena Devi w/o Shri Ajay Kumar, r/o Village Ghar, PO Harsa, Tehsil Jawali District Kangra, HP, for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving her full and final amounting to ₹25,31,801/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its, effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,09,672/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

YYYYYYY. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

ZZZZZZZ. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

AAAAAAA. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

BBBBBBBB. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

CCCCCCCC. That the record of the case may kindly also be summoned.

DDDDDDDD. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are two unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25, 31,801/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereun

Issue No.1 : No, Not entitled to any relief

Issue No.2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically

reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given to the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur

Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Later on, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316), Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accomodated at various plants *i.e.* Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the

terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such

establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or

(ii) **accumulation of undisposed of stocks; or**

(iii) **the expiry of the period of the lease or licence granted to it; or**

(iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "Shall" thrice (3) in the provisions of section 25-FFA and the use of same expression "Shall" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the

company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 37 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the

reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e. two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes H.P. amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Maharashtra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis

Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation

amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-

Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus

The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment

by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25, 31,801/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 81 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.2023

Urmila Devi w/o Shri Asha Ram r/o Village Jhamrada P.O. Goela, Tehsil Kasauli, District Solan, H.P. . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respo*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 18.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Urmila Devi W/o Shri Asha Ram R/o Vilalge Jhamrada PO Goela, Tehsil Kasauli, District Solan, HP, for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving her full and final amounting to ₹25,15,498/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), *vide* appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner

falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,98,954/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

EEEEEEEE. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

FFFFFFF. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

GGGGGGGG. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

HHHHHHHH. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

IIIIIII. That the record of the case may kindly also be summoned.

JJJJJJJ. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad

and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹25, 15,498/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

..OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereun

Issue no.1 : No. Not entitled to any relief.

Issue No.2 : No.

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that

as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the

respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice

period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 39 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd."

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ` 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act.

Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act *i.e* section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment *i.e* two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons

for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork

with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of

Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.¹⁰ In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court

Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25

FFA of the Act. *Fifthly*, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,15,498/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 82 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.2023

Kanta Thakur w/o Shri Devender Kumar r/o Village Okhroo, P.O. Okhroo, Tehsil &
District Shimla, H.P.*Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office
Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized
Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1,
Jharmajri, Baddi, District Solan, H.P.*Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide
notification dated 18.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter
referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Kanta Thakur w/o Shri Devender Kumar r/o Village Okhroo,
P.O. Okhroo, Tehsil & District Shimla, HP, for her reinstatement in service *w.e.f.*
21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP
Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving her full and final amounting to
₹25,57,566/- is proper and justified? If yes, what relief the above aggrieved workman is
entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in
the statement of claim, are thus that the petitioner was engaged as general workman trainee by the
Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi,

District Solan, H.P. (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), *vide* appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ` 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,34,047/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

KKKKKKKK. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

LLLLLLLL. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

MMMMMMMM. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

NNNNNNNN. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

OOOOOOOO. That the record of the case may kindly also be summoned.

PPPPPPPP. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day’s advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who

were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25, 57,566/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1 : No. Not entitled to any relief

Issue No.2 : No.

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of aw

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the

services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A

and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan

Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—**

- (i) less than fifty workmen are employed, or
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the

workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 39 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the

company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy

Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "lay off and retrenchment", "special provisions relating to lay-off, retrenchment and closure in certain establishment", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the

unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent No.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has

been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc.* LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.¹⁰ In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-

4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength

by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,57,566/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 83 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.20

Satish Kumar s/o Shri Biptu Ram r/o Village Shornu P.O. Kamlehar, Tehsil Palampur,
District Kangra, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Responden.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Satish Kumar S/o Shri Biptu Ram R/o Village Shornu PO Kamlehar, Tehsil Palampur, District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to `24,09,647/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate

of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 1,72,527/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

QQQQQQQQ. That the termination/retrenchment of the petitioner *vide* communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

RRRRRRRR. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

SSSSSSSS. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

TTTTTTTT. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

UUUUUUUU. That the record of the case may kindly also be summoned.

VVVVVVVV. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,09,647/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

..OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

..OPR.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereun

Issue No.1 : No. Not entitled to any relief.

Issue No.2 : No.

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was

over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and

tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to

concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the**

other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was

no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its

sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent No.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a

case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act. 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or

relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,09,647/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is

not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 84 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.2023

Mangal Singh s/o Shri Ramesh Chand r/o Village Sarhooh, P.O. Sukhar, tehsil Nurpur,
District Kangra, H.P. . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner	: Shri Rajiv Rai, Advocate
For the Respondents	: Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Mangal Singh S/o Shri Ramesh Chand R/o Village Sarhooh, PO Sukhar, tehsil Nurpur, District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹24,13,415/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad,

Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,14,386/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

wwwwwww. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innito.

xxxxxxx. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

yyyyyyy. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant,

factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

ZZZZZZZZ. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of `50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

AAAAAAAAA. That the record of the case may kindly also be summoned.

BBBBBBBBBB. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated

as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,13,415/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

. . *OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

. . *OPR.*

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1 : No. Not entitled to any relief.

Issue No.2 : No.

Relief. : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior

to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termiantion letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimiantion in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as

managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner

had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or

part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be

at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act *i.e* section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment *i.e* two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022,

assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent No.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent No.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent No.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section

25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what

material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947

Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.¹⁰ In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman *Firstly*, he is the employee of the respondent, which he has miserably failed to do so. *Secondly*, there is severance and does not exist the Employer Employee relationship between the parties. *Thirdly*, once the relationship does not exist than there is no value attached or credence to

be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. *Fourthly*, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. *Fifthly*, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,13,415/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 85 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.2023

Neelam Kumar s/o Shri Roop Singh r/o Village and P.O. Pairwin, Tehsil Barsar, District Hamirpur, H.P. . .*Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Neelam Kumar S/o Shri Roop Singh R/o Village and PO Pairwin, Tehsil Barsar, District Hamirpur, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹24,16,415/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,18,000/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

CCCCCCCCC. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

DDDDDDDDD. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

EEEEEEEEEE. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

FFFFFFFFF. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

GGGGGGGGG. That the record of the case may kindly also be summoned.

HHHHHHHHH. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal

reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,16,415/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

- | | |
|------------|---|
| Issue No.1 | : No. Not entitled to any relief |
| Issue No.2 | : No. |
| Relief | : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award. |

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He

admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company.

He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termiantion letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimiantion in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respodnent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the peittioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen

Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316), Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen

to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of**

carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried

on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc.* LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the

section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or

relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,16,415/- or in alternative to enhance the compensation amount upto ` 50 lacs (Fifty Lacs), is

not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 86 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.2023

Sunil Dutt s/o Shri Ayodhya Dass r/o Village Ligwin, P.O. Dhaned Tehsil & District Hamirpur, H.P. . .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 13.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Sunil Dutt S/o Shri Ayodhya Dass R/o Village Ligwin, PO Dhaned Tehsil & District Hamirpur, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,26,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul,

Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,12,413/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

IIIIIIII. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innito.

JJJJJJJJ. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

KKKKKKKKK. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

LLLLLLLLL. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of `50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

MMMMMMMMM. That the record of the case may kindly also be summoned.

NNNNNNNNN. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does

not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,26,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?
.. *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?
.. *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunde

Issue No.1 : No. Not entitled to any relief.

Issue No.2 : No.

Relief

: Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and

the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice

under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started

pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen,

which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out

whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ` 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the

beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh *vide* its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc.* LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons

for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the

legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression

"as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.¹⁰ In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court

Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision

of section 25 FFA of the Act. *Fifthly*, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ` 25,26,202/- or in alternative to enhance the compensation amount upto ` 50 lacs (Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 87 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.2023

Parkash Chand s/o Shri Roshan Lal r/o Village Rouna, P.O. Zakat Khana, Tehsil Shri Naina
Devi Ji, District Bilaspur, H.P. . . . *Petitioner.*

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office
Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized
Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1,
Jharmajri, Baddi, District Solan, H.P. . . . *Respondent*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide*
Notification dated 13.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter
referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Parkash Chand s/o Shri Roshan Lal R/o Village Rouna, PO
Zakat Khana, Tehsil Shri Naina Devi Ji, District Bilaspur, HP, for his reinstatement in
service *w.e.f.* 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson
Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and
final amounting to ₹25,38,202/- is proper and justified? If yes, what relief the above
aggrieved workman is entitled to from the above management/employer? and if not its
effect?”

2. Material facts necessary for the disposal of present reference petition, as described in
the statement of claim, are thus that the petitioner was engaged as general workman trainee by the
Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi,

District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "Workman" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,22,020/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

OOOOOOOOO. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

PPPPPPPPP. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

QQQQQQQQQ. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

RRRRRRRRR. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

SSSSSSSSS. That the record of the case may kindly also be summoned.

TTTTTTTTT. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day’s advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board.

Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,38,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1 : No, Not entitled to any relief

Issue No.2 : No.

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the

services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A

and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ` 50 lacs (Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is

true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no

application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "undertaking" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "industry". "Undertaking" is a concept narrower than "industry". The industrial establishment or "undertaking" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "closure" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply

in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

**The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla
Dear Sir/Madam**

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ` 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the

full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "lay off and retrenchment", "special provisions relating to lay-off, retrenchment and closure in certain establishment", and "unfair labour practices", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three

month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ` 50 lacs (Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking.

Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has

been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write. “It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.¹⁰ In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the

proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner’s case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it’s adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned

down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ` 25,38,202/- or in alternative to enhance the compensation amount upto ` 50 lacs (Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

Issue No. 2.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(Rajesh Tomar),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 88 of 2022

Instituted on : 21.02.2022

Decided on : 27.04.2023

Puran Singh s/o Shri Budhi Singh r/o Village Bhedkhad, P.O. Junuia, Tehsil Nurpur,
District Kangra, H.P. .Petitioner.

Versus

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 13.12.2021, under section 10 of the Industrial Dispute Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the demand of Shri Puran Singh S/o Shri Budhi Singh R/o Village Bhedkhad, PO Junuia, Tehsil Nurpur, District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to `24,19,647/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (hereinafter to be referred as the respondent no.2), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (hereinafter to be referred as the respondent no.1), vide appointment letter for a period of six months, on basic salary of ` 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “Workman” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner

was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,26,124/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

UUUUUUUUU. That the termination/retrenchment of the petitioner *vide* communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

VVVVVVVVV. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

WWWWWWW. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

XXXXXXXXX. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

YYYYYYYYY. That the record of the case may kindly also be summoned.

ZZZZZZZZZ. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,19,647/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect?

.. *OPP.*

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged?

.. *OPR.*

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1 : No, Not entitled to any relief

Issue No.2 : No

Relief : Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

Issue No.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent

management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case

titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-

FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“ 2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and**

is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--

- (i) less than fifty workmen are employed, or
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not

be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “Shall” thrice (3) in the provisions of section 25-FFA and the use of same expression “Shall” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “undertaking” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “industry”. “Undertaking” is a concept narrower than “industry”. The industrial establishment or “undertaking” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “closure” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ` 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act *i.e* section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject “lay off and retrenchment”, “special provisions relating to lay-off, retrenchment and closure in certain establishment”, and “unfair labour practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ` 50 lacs (Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent No.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent No.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc.* LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the

section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in India Hume Pipe Company versus Their workman, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.10. In view of the findings recorded

above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice. It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc. Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342 and Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020 and also judgment of Central Administrative Tribunal Hyderabad Bench, in case K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and

the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman Firstly, he is the employee of the respondent, which he has miserably failed to do so. Secondly, there is severance and does not exist the Employer Employee relationship between the parties. Thirdly, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. Fourthly, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. Fifthly, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the Industrial Dispute, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ` 24,19,647/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

Relief

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 27th day of April, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

निर्वाचन विभाग, हिमाचल प्रदेश सरकार
38-एस. डी. ए. कॉम्प्लैक्स, कसुम्पटी, शिमला -171009

अधिसूचना

दिनांक: 30 अक्टूबर, 2023

संख्या 3-16/2023-ई0एल0एन0.—भारत निर्वाचन आयोग के आदेश सं0 76/हिमा0-वि0स0/56/2022 सी.ई.एम.एस.-1, दिनांक 20 अक्टूबर, 2023, तदानुसार 28 आश्विन, 1945 (शक) जो कि हिमाचल प्रदेश के 56-नाहन विधान सभा निर्वाचन क्षेत्र के लिए साधारण निर्वाचन, 2022 में निर्वाचन लड़ने वाले अभ्यर्थी श्री रमजान द्वारा अपेक्षित निर्वाचन व्ययों का लेखा दाखिल करने में असफल होने पर लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10क के अनुसरण में अभ्यर्थी को तीन वर्ष की अवधि के लिए संसद के किसी भी सदन या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद् का सदस्य चुने जाने के लिए निरर्हित घोषित करने के सम्बन्ध में है, को अंग्रेजी रूपान्तर सहित जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,

मनीष गर्ग
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश ।

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

आदेश

दिनांक 20 अक्टूबर, 2023,
(28 आश्विन, 1945 (शक))

सं076/हिमा0-वि0स0/56/2022 सी.ई.एम.एस.-1.—यतः, भारत निर्वाचन आयोग की अधिसूचना सं0 464/हि0प्र0-वि0स0/2022, दिनांक 17 अक्टूबर, 2022 के अनुसरण में 56—नाहन विधान सभा निर्वाचन क्षेत्र के लिए हिमाचल प्रदेश विधान सभा का साधारण निर्वाचन, 2022 आयोजित किया गया था; और

यतः, लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 78 के अनुसार, किसी निर्वाचन में, निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, निर्वाचित अभ्यर्थी के निर्वाचन की तारीख से 30 दिनों के भीतर अपने निर्वाचन व्यय का लेखा जिला निर्वाचन अधिकारी के पास दाखिल करेगा जो उक्त अधिनियम की धारा 77 के अन्तर्गत उसके द्वारा या उसके निर्वाचन अभिकर्ता (एजेंट) द्वारा रखे गए लेखे की एक सत्य प्रति होगी; और

यतः, हिमाचल प्रदेश के 56—नाहन विधान सभा निर्वाचन क्षेत्र के साधारण निर्वाचन, 2022 का परिणाम रिटर्निंग ऑफिसर द्वारा दिनांक 08 दिसंबर, 2022 को घोषित किया गया था और इस प्रकार निर्वाचन व्यय के लेखे दाखिल करने की अन्तिम तारीख 07 जनवरी, 2023 थी; और

यतः, निर्वाचनों का संचालन नियम, 1961 के नियम 89 के उप-नियम (1) के अंतर्गत, जिला निर्वाचन अधिकारी, सिरमौर के दिनांक 12-01-2023 के पत्र सं0 3-एस.आर.एम.-11/2018-ईएलएन-58 की रिपोर्ट के अनुसार रमजान, जो हिमाचल प्रदेश के 56—नाहन विधान सभा निर्वाचन क्षेत्र, 2022 से निर्वाचन लड़ने वाले अभ्यर्थी हैं विधि के अन्तर्गत यथापेक्षित रीति से अपने निर्वाचन व्यय के लेखे दाखिल करने में असफल रहे हैं; और

यतः, जिला निर्वाचन अधिकारी, सिरमौर की उक्त रिपोर्ट के आधार पर भारत निर्वाचन आयोग द्वारा निर्वाचनों का संचालन नियम, 1961 के नियम 89 के उप-नियम (5) के अंतर्गत रमजान को अपने निर्वाचन व्यय के लेखे प्रस्तुत नहीं करने के लिए कारण बताओ नोटिस सं. 76/हिमा0-वि0स0/56/2022 सी.ई.एम.एस.-1 दिनांक: 27 जून, 2023 जारी किया गया था, और

यतः, उपर्युक्त कारण बताओ नोटिस के जरिए और निर्वाचनों का संचालन नियम, 1961 के नियम 89 के उप-नियम (6) के अंतर्गत रमजान, को लेखा प्रस्तुत न किए जाने संबंधी कारणों को स्पष्ट करते हुए, आयोग को अपना अभ्यावेदन लिखित रूप में प्रस्तुत करने और नोटिस के प्राप्त होने की तारीख से 20 दिनों के भीतर जिला निर्वाचन अधिकारी, सिरमौर जिला को अपने निर्वाचन व्यय का लेखा प्रस्तुत करने का निदेश दिया गया था, और

यतः, जिला निर्वाचन अधिकारी सिरमौर जिला ने अपनी रिपोर्ट पत्र सं0 3-एसआरएम-11/2018-ईएलएन-658 दिनांक 27.07.2023 के द्वारा प्रस्तुत किया कि उक्त कारण बताओ नोटिस रमजान, को दिनांक 26.7.2023 को तामील किया गया था, और,

यतः मुख्य निर्वाचन अधिकारी, हिमाचल प्रदेश ने पत्र सं. 3-7/2023-ईएलएन-ईईएम-III, दिनांक 06 सितम्बर 2023 के द्वारा जिला निर्वाचन अधिकारी, सिरमौर की अनुपूरक रिपोर्ट सं. एस.आर.एम.-11/2018 ई.एल.एन-795 दिनांक 04 सितम्बर 2023 को अग्रेषित किया और बताया कि रमजान, ने निर्वाचन व्यय के लेखे का कोई विवरण या अभ्यावेदन प्रस्तुत नहीं किया है। इसके अतिरिक्त, उक्त नोटिस की पावती के उपरान्त, रमजान, ने विधि के अंतर्गत यथा विहित लेखा दाखिल करने में अपनी असफलता के लिए भारत निर्वाचन आयोग को न तो कोई कारण बताया है और न ही कोई स्पष्टीकरण दिया है, और

यतः, लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10क में यह उपबंधित किया गया है कि:

“ यदि निर्वाचन आयोग का समाधान हो जाता है कि कोई व्यक्ति

(क) निर्वाचन व्ययों का लेखा उस समय के भीतर और उस रीति में जैसी इस अधिनियम के द्वारा या अधीन अपेक्षित है, दाखिल करने में असफल रहा है, और

(ख) उस असफलता के लिए कोई अच्छा कारण अथवा न्यायोचित्य नहीं रखता है तो निर्वाचन आयोग, शासकीय राजपत्र में प्रकाशित आदेश द्वारा उसको निरर्हित घोषित करेगा और ऐसा व्यक्ति उस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित होगा।

यतः, तथ्यों और उपलब्ध रिकार्डों के आधार पर, आयोग का यह समाधान हो गया है कि रमजान, अपने निर्वाचन व्यय के लेखे दाखिल करने में असफल रहे हैं और उनके पास ऐसा करने में असफल रहने के लिए कोई भी उचित कारण अथवा औचित्य नहीं है, और

अतः अब लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10क के अनुसरण में, भारत निर्वाचन आयोग एतद्द्वारा घोषणा करता है कि हिमाचल प्रदेश के 56—नाहन विधानसभा निर्वाचन क्षेत्र के लिए साधारण निर्वाचन 2022 में निर्वाचन लड़ने वाले अभ्यर्थी रमजान, ग्राम मेलिया, पी0ओ0, माजरा, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश इस आदेश की तारीख से तीन वर्ष की अवधि के लिए संसद के किसी भी सदन अथवा राज्य अथवा संघ राज्य क्षेत्र की विधानसभा अथवा विधान परिषद का सदस्य चुने जाने अथवा होने के लिए निरर्हित होंगे।

सुजीत कुमार मिश्र,
सचिव।

सेवा में,

रमजान,
ग्राम मेलिया,
पी0ओ0, माजरा, तहसील पांवटा साहिब,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग
ELECTION COMMISSION OF INDIA
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001.
Nirvachan Sadan, Ashoka Road, New Delhi-110001

ORDER

Dated the 20th October, 2023
(28 Asvina, 1945 (Saka))

No. 76/HP-LA/56/2022/CEMS-1/.—WHEREAS, the General Election to Legislative Assembly of Himachal Pradesh, 2022 for 56-Nahan Assembly Constituency was held in pursuance of the Election Commission of India Notification No. 464/HP-LA/2022, dated 17th October, 2022; and

WHEREAS, as per Section 78 of the Representation of People Act, 1951, every contesting candidate at an election shall, within 30 days from the date of election of the returned candidate, lodge with the District Election Officer an account of his election expenses which shall be true copy of the account kept by him or his election agent under Section 77 of the said act; and

WHEREAS, the result of the election for **56-Nahan** Assembly Constituency of Himachal Pradesh, 2022 was declared by the Returning Officer on 8th December, 2022 and hence the last date for lodging the account of Election Expenses was 7th January, 2023; and

WHEREAS, as per the report dated 12-01-2023 of the **DEO, Sirmaur**, under sub-rule (1) of Rule 89 of the Conduct of Elections Rule, 1961, received from the **DEO, Sirmaur** vide his letter No.3-SRM-11/2018-ELN-58, dated 12th January, 2023, **Sh. Ramjan**, a constesting candidate from **56-Nahan** Assembly Constituency of Himachal Pradesh, 2022 has failed to lodge account of election expenses, as required under law; and

WHEREAS, on the basis of the said report of the District Election Officer Sirmaur, a Show-Cause Notice No. **76/HP-LA/56/2022/CEMS-1**, dated **27th June, 2023** was issued under sub-rule (5) of Rule 89 of the Conduct of Election Rules, 1961 by the Election Commission of India **Ramjan** for not lodging of account of Election Expenses; and

WHEREAS, through the above said Show Cause Notice and under sub rule (6) of Rule 89 of the Conduct of Election Rules, 1961, **Ramjan** was directed to submit representation in writing to the Commission explaining the reasons for not lodging the account and also to lodge account of election expenses with the District Election Officer, **Sirmaur**, District within 20 days from the date of receipt of the notice; and

WHEREAS, the District Election Officer, **Sirmaur** District, vide his letter no. 3-SRM-11/2018-ELN-658 of 27-07-2023 has reported that the said notice was served to **Ramjan** on **26-07-2023**; and

WHEREAS, the CEO, Himachal Pradesh vide letter No. 3-7/2023-ELN-EEM-III, dated 6th September, 2023 forwarded the District Election Officer, **Sirmaur** Supplementary Report No.S.R.M-11/2018-E.L.N-795, dated 4th September, 2023 and reported stated that **Ramjan** has not submitted any representation of a statement of correct account of election expenses duly signed alongwith original vouchers etc. Further, after receipt of the said notice, **Ramjan** has neither furnished any reason nor explanation to the Election Commission of India, for failure to lodge the account as prescribed under law; and

WHEREAS, Section 10A of the Representation of the People Act, 1951 provides that:—

“If the Election Commission is satisfied that a person—

- (a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and*
- (b) has no good reason or justification for the failure,*

the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.”;

WHEREAS, on the basis of facts and available records, the Commission is satisfied that **Ramjan** has failed to lodge account of election expenses and has no good reason or justification for the failure to do so; and

NOW, THEREFORE, in pursuance of Section 10A of the Representation of the People Act, 1951, the Election Commission of India hereby declares **Ramjan, Vill. Melion, P.O. Majra,**

Tehsil Paonta Sahib, Distt. Sirmaur, Himachal Pradesh-173021 and a contesting candidate in **56-Nahan Assembly Constituency** of the State of Himachal Pradesh in the General Election to the Legislative Assembly 2022 to be disqualified for being chosen as and for being a member of either House of the Parliament or the Legislative Assembly or the Legislative Council of a State or Union Territory for a period of three years from the date of this order.

SUJEET KUMAR MISHRA,
Secretary.

To

Sh. Ramjan,
Vill. Melion, P.O. Majra,
Tehsil Paonta Sahib,
Distt. Sirmaur, Himachal Pradesh-173021.

CHANGE OF NAME

I, Birma Devi w/o Geeta Ram, r/o Village Dhar Pabech, P.O. Leunana, Tehsil Rajgarh, District Sirmaur (H.P.) want to correct my daughter's name as Simple Kumari *instead* of Sanjna be corrected please.

BIRMA DEVI
w/o Geeta Ram,
r/o Village Dhar Pabech, P.O. Leunana,
Tehsil Rajgarh, District Sirmaur (H.P.).

